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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/620,444

**Applicant(s)**

MELAMED, NITZAN

**Examiner**

STEFANOS KARMIS

**Art Unit**

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-10,12-18,20-26 and 28-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12-18,20-26 and 28-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The following communication is in response to Applicant's amendment filed 05 June 2007. A final rejection was previously sent on these claims on 08 August 2007, however the final rejection was improper because the new grounds of rejection was not necessitated by amendment. See Interview Summary mailed 15 November 2007. Therefore the finality is withdrawn.

#### ***Status of Claims***

2. Claims 1, 10, 18, 26 and 34 are currently amended. Claims 2, 11, 19 and 27 are cancelled. Therefore claims 1, 3-10, 12-18, 20-26 and 28-40 remain pending.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 26 and 28-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 26 and 28-33, the Examiner finds these claims are not statutory. The claims are directed towards software, per se, lacking storage on a medium, which enables any underlying functionality to occur. It is not clear whether instructions are in executable form and therefore there is no practical application.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4-7, 10, 12-15, 18, 20-23, 26-31 and 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maggioncalda et al. (hereinafter Maggioncalda) U.S. Patent 7,062,458 in view of Peters et al. (hereinafter Peters) U.S. Publication 2003/0208427 in further view of Sloan et al. (hereinafter Sloan) U.S. Publication 2002/0147671.

Regarding claim 1, Maggioncalda teaches a computer-implemented or assisted method for implementing a constant volatility index, the index having an associated risk, said computer-implemented or assisted method comprising the steps of:

Establishing a constant target level of risk at which to maintain said portfolio (column 14, lines 1-14 and column 32, lines 38-67 and Figure 10B; Examiner notes that the user sets a risk tolerance for the portfolio, which consists indexes, to maintain);

Monitoring said level or risk associated with said portfolio (column 28, lines 28-60 and column 29, lines 38-63); and

Notifying the user to rebalance portfolio when the risk deviates from the constant target level of risk in order to maintain a specified level of risk (column 28, lines 28-60; Examiner notes that the system notifies the user that he/she should rebalance the portfolio). Maggioncalda

teaches that system advisor provides a recommendation such as “rebalance” and is given the opportunity to adjust risk decision and select to “implement” the recommendation (Figure 14; See “rebalance” and “implement”). Maggioncalda fails to specifically teach the rebalancing steps the user selects a desire to rebalance the portfolio. Peters teaches an automated investment advisory software that provides investment advice over a distributed network (page 4, paragraph 0055). Peters teaches that a user risk profile is compared to an investment risk classification of a portfolio (page 5, paragraphs 0061-0062). The system can suggest changes to the user’s portfolio to better correlate the risk comparison and the users can execute the changes to achieve the portfolio that corresponds with the recommendation by placing portfolio orders directly through the system (page 5, paragraph 0062). It would have been obvious to one of ordinary skill in the art at the time of the Applicant’s invention to modify the teachings of Maggioncalda to include the execution of the new portfolio as taught by Peters because it provides the implementation of the recommended portfolio rebalance when a target level of risk is not maintained.

Maggioncalda in view of Peters fails to teach implementing a risk band to delimit a constant lower level of risk below said target level of risk and constant upper level of risk above said target level of risk of the portfolio, and rebalancing the portfolio when rises above the upper level or risk or drops below the lower level or risk, thereby substantially maintaining the risk associated with the portfolio. Sloan teaches a financial portfolio risk management system utilizing risk bands (page 9, paragraph 0098). Sloan teaches that there is a risk tolerance to meet the user’s investment profile and that a portfolio can be rebalanced for risk that is too high and too low (page 9, paragraph 0098 and page 10, paragraph 0110). It would have been obvious to

one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Maggioncalda in view of Peters to include the risk band teachings of Sloan because it provides a risk band that further defines a risk tolerance acceptable to a user when maintaining a desired level of risk.

Claim 4, Maggioncalda teaches that the level of risk is measured using at least one of standard deviation, variance, average shortfall, VAR, or any other similar analogous measures (column 33, lines 25-40).

Claims 5 and 6, Maggioncalda teaches recommending rebalancing comprises reallocating assets from relatively high risk components of said index to relatively low risk components if the risk associated with the portfolio exceeds a predetermined level or reallocating assets from low risk components to relatively high risk components if the risk associated with the portfolio drops below a level of risk by a predetermined level (column 33, line 53-63 and column 38, lines 40 thru column 39, line 15 and Figure 17A and Figure 17B).

Claim 7, Maggioncalda teaches that the portfolio comprise at least one security and cash (column 10, lines 41-67). Peters also teaches that investments are diversified, ranging from stocks to cash (page 7, paragraph 0083).

Claims 10, 18, 26 and 34 are substantially similar to claim 1 and are therefore rejected under the reasoning for claim 1 above.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maggioncalda et al. (hereinafter Maggioncalda) U.S. Patent 7,062,458 in view of Peters et al. (hereinafter Peters) U.S. Publication 2003/0208427 in view of Sloan et al. (hereinafter Sloan) U.S. Publication 2002/0147671 in further view of Lange, U.S. Patent 6,321,212.

Claim 3, Maggioncalda in view of Peters in view of Sloan teaches measuring levels of risk in order to optimize a portfolio. Maggioncalda in view of Peters in view of Sloan fails to teach measuring the level of risk using RiskMetric Group's RiskGrade measure. Lange teaches risk calculations that pull information from a RiskMetric database (column 74, lines 31-46 and column 76, lines 43-48). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Maggioncalda in view of Peters in view of Sloan to include measuring risk using RiskMetric database as taught by Lange because it provides for risk calculations of portfolios and would allow Maggioncalda in view of Peters to use the measurement for determining when to suggest rebalancing a portfolio to be more aligned with a user's desired risk preference.

8. Claims 8, 9, 16, 17, 24, 25, 32, 33, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maggioncalda et al. (hereinafter Maggioncalda) U.S. Patent 7,062,458 in view of Peters et al. (hereinafter Peters) U.S. Publication 2003/0208427 in view of Sloan et al. (hereinafter Sloan) U.S. Publication 2002/0147671 in further view of Wallman, U.S. Patent 6,601,044.

Claims 8 and 9, Maggioncalda teaches that the portfolio comprises at least one security and cash (column 10, lines 41-67). Peters also teaches that investments are diversified, ranging from stocks to cash (page 7, paragraph 0083). Maggioncalda in view of Peters in view of Sloan fails to teach shifting cash and securities to increase or decrease risk. Wallman teaches maintaining a users desired risk by shifting securities with cash (column 27, lines 38-62). Therefore it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Maggioncalda in view of Peters in view of Sloan to include the risk teachings of Wallman because it provides for increasing/decreasing portfolio risk when optimizing a portfolio to be aligned with a user's preferences.

Claims 16, 24, 32 and 39 are substantially similar to claim 8 and are therefore rejected under the same reasoning for claim 8 above.

Claims 17, 25, 33 and 40 are substantially similar to claim 9 and are therefore rejected under the same reasoning for claim 9 above.

Claim 12, 20, 28 and 35 are substantially similar to claim 4 and are therefore rejected under the same reasoning for claim 4 above.

Claims 13, 21, 29 and 36 are substantially similar to claim 5 and are therefore rejected under the same reasoning for claim 5 above.



Claims 14, 22, 30 and 37 are substantially similar to claim 6 and are therefore rejected under the same reasoning for claim 6 above.

Claims 15, 23, 31 and 38 are substantially similar to claim 7 and are therefore rejected under the same reasoning for claim 7 above.

### ***Response to Arguments***

9. Applicant's arguments from 05 June 2007, regarding the rejection of claims 26 and 28-33 have been fully considered but they are not persuasive. The claims are directed towards software, per se, lacking storage on a medium, which enables any underlying functionality to occur. It is not clear whether instructions are in executable form and therefore there is no practical application.

10. Applicant's arguments from 05 June 2007 with respect to claims 1, 3-10, 12-18, 20-26 and 28-40 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEFANOS KARMIS whose telephone number is (571)272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully Submitted  
/Stefanos Karmis/  
Primary Examiner, Art Unit 3693  
17 September 2008